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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/656,431

09/05/2003

Richard Charles Flaherty

NC073-US1/5487-148

7577

7590

05/12/2005

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EXAMINER

NGHIEM, MICHAEL P

ART UNIT

PAPER NUMBER

2863

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

21

<b>Office Action Summary</b>	<b>Application No.</b> 10/656,431	<b>Applicant(s)</b> FLAHERTY, RICHARD CHARLES	
	<b>Examiner</b> Michael P. Nghiem	<b>Art Unit</b> 2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 and 5-10 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 11 and 12 is/are rejected.
- 7) ☒ Claim(s) 13 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-27-04</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

The Amendment filed on March 3, 2005 has been acknowledged.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Okita et al. (US 4,774,613).

Regarding claims 1, 11, and 12, Okita et al. discloses a method and apparatus (Figs. 1a, 1b) for calibrating a photocontrol device (22) having at least one flexible mounting leg (22e) mounting the photosensor (22a) to a circuit board (22c) and being electrically coupled to activate a switching device (15b) (Fig. 3), the method comprising:

- positioning the photocontrol device (22) proximate a light source (column 9, lines 23-26);
- positioning an aperture (22r) between the photosensor and the light source (column 9, lines 23-26, Fig. 1b);

Art Unit: 2863

- adjusting an angle between the at least one flexible mounting leg and the circuit board (when 22k presses against 22e, column 10, lines 13-15, it creates an angle with respect to 22c by bending 22e, column 10, lines 35-37) without moving the aperture (only one aperture 22r is moved, column 10, lines 24-26) to calibrate a sensitivity of the photocontrol device to light from the light source passing through the aperture (column 10, lines 25-33).

Regarding claim 2, Okita et al. discloses that adjusting an angle comprises bending the at least one flexible mounting leg (column 10, lines 35-38).

Regarding claim 4, Okita et al. discloses that adjusting an angle comprises adjusting a magnitude of misalignment between the photosensor and the aperture to calibrate the sensitivity of the photocontrol device (column 10, lines 25-33).

Regarding claim 12, Okita et al. further discloses a cover (cover of 22a) having a light transmissive window (Figs. 1a, 1b) therein and wherein the cover is positioned over the upper surface of the circuit board (Fig. 1a) with the light transmissive window positioned adjacent the photosensor (Figs. 1a, 1b).

***Allowable Subject Matter***

2. Claims 13 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

3. Claims 3 and 5-10 are allowed.

***Reasons For Allowance***

4. The combination or method as claimed wherein the at least one flexible mounting leg comprises a first and second wire lead coupling the photosensor to a relay circuit of the photocontrol device (claim 3) or adjusting a magnitude of misalignment comprises increasing the magnitude of misalignment to decrease the sensitivity of the photocontrol device (claim 5) or adjusting a magnitude of misalignment comprises bending the at least one flexible mounting leg to increase an angle between the photosensor and the circuit board facing the aperture to reduce the sensitivity of the photocontrol device (claim 8) or a detection circuit coupled to the photosensor by the at least one flexible mounting leg and wherein the detection circuit does not include a calibration resistor for the photosensor (claim 13) or the photosensor is misaligned toward an upper surface of the cover and away from the circuit board and wherein the cover is configured to present a shadowed region to the photosensor when the

Art Unit: 2863

photocontrol device is positioned in sunlight (claim 15) is not disclosed, suggested, or made obvious by the prior art of record.

### ***Response to Arguments***

5. Applicant's arguments filed on March 3, 2005 have been fully considered but they are not persuasive.

With respect to the 35 USC 102 rejections of claims 11 and 12, Applicants argue that the Office Action does not address the language of "bending a flexible mounting leg of the photosensor **to a selected misalignment relative to the aperture.**"

Examiner's position is that the Office Action, filed on December 13, 2004, asserts that Okita discloses "adjusting an angle between the at least one flexible mounting leg and the circuit board (when 22k presses against 22e, column 10, lines 13-15, it creates an angle with respect to 22c by bending 22e, column 10, lines 35-37) to calibrate a sensitivity of the photocontrol device to light from the light source passing through the aperture (column 10, lines 25-33)" (Page 5, paragraph 2). When (22e) is bent, it not only creates an angle with respect to (22c) but also with respect to (22r) (Fig. 1a) (note only one 22r is moved, column 10, lines 24-26).

Art Unit: 2863

With respect to the 35 USC 102 rejections of claim 1, Applicants argue that Okita does not disclose or suggest that the angle between the at least one flexible leg and the circuit board is adjusted "without moving the aperture."

Examiner's position is that Okita discloses that the angle between the at least one flexible leg and the circuit board is adjusted (when 22k presses against 22e, column 10, lines 13-15, it creates an angle with respect to 22c by bending 22e, column 10, lines 35-37) 'without moving the aperture' (only one aperture 22r is moved, the other aperture 22r is stationary, column 10, lines 24-26).

With respect to claim 4, Applicants further argue that there is no disclosure or suggestion of adjusting a relationship between a sensor and an aperture.

Examiner's position is that Okita discloses adjusting a relationship between a sensor (22a) and an aperture (22r) (column 10, lines 25-33 in view of Fig. 1b).

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2863

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Contact Information***

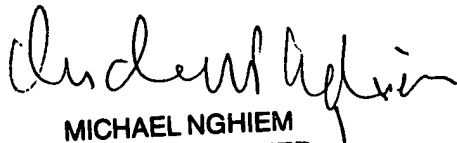
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P Nghiem whose telephone number is (571) 272-2277. The examiner can normally be reached on M-H.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Art Unit: 2863

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MICHAEL NGHIEM  
PRIMARY EXAMINER

Michael Nghiem

May 10, 2004